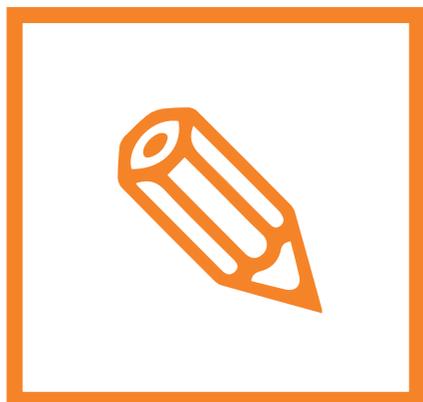


The Essential Company Secretary

In-depth guide



The Essential Company Secretary

For co-operatives registered under the Companies Act 2006

The Companies Act 2006 dispensed with the requirement for private limited companies to appoint a secretary. However, the duties that would normally be carried out by the secretary still need to be actioned. Therefore, it is best practice for a company to appoint a secretary or named person who will be responsible for carrying out these duties. If a company's governing document includes provision for a secretary, one must be appointed.

It is usual for the secretary to know more about the governing document, commonly referred to as the 'articles', than other members and to ensure that all relevant legislation is complied with.

What qualifications does a company secretary need?

A secretary of a private limited company is not required to possess any formal qualifications. However, the governing body (often referred to as 'the board of director' or 'the board') would fail in its duty of care if they appointed someone who does not have the ability and/or access to the relevant advice to enable them to carry out the role. A member of the governing body may also be appointed as company secretary.

How are the liabilities of a company secretary?

The company secretary is protected by limited liability. However, limited liability may be lost if he/she fails to perform duties required under the Company Act 2006. In the main, he/she will only incur liability if the negligent acts were knowing or deliberate.

What are the responsibilities of a company secretary?

It is the responsibility of the company's governing body to ensure that the administrative requirements of the Act are complied with. However, the governing body will often delegate administrative tasks to the secretary. These tasks will vary depending on the needs of the company and areas of business in which it operates. For example, a person taking over the role of the company secretary will have different priorities to a secretary of a newly established company¹. The following pages give an overview of the main responsibilities of the company secretary.

¹ Page nine outlines the key points for the secretary of a newly registered company.

Annual duties

Arrange for the company accounts to be prepared and (if required) audited

The form of a company's accounts will depend on whether it is small, medium or large. Most small companies are exempt from having an audit under company law. See <http://www.companieshouse.gov.uk/about/gbhtml/gp2.shtml> for more information on company accounting and auditing requirements.

Ensure that a directors' report is prepared and agreed by the governing body

The report must be signed on the governing body's behalf by a director or the company secretary

Responsibility for the availability of the company accounts and auditor's report

Members, debenture holders and any other person entitled to receive notice of general meetings must have access to the accounts and auditor's report (if required) free of charge.

Hold the annual general meeting (AGM) in accordance with the governing document

If the articles require an AGM to be held, it is usual for this to take place within nine months of the company's accounting reference date (financial year end) so that accounts, after being signed by the auditor (if required) and following approval by the governing body, can be presented to members.

Send annual return to Companies House

This will be sent annually or within 28 days of the anniversary of the company's incorporation or of the anniversary of the made-up date of the last annual return. The fee payable is £15 if it is submitted electronically and £40 if it is on paper².

² Annual return requirements are due to change in June 2016. For more information see: <https://www.gov.uk/government/news/the-small-business-enterprise-and-employment-bill-is-coming>

General/continual responsibilities

Keep a Register of Members at the registered office.

The register must be kept in a bound book or in some other way that allows for precautions against falsification and detection if falsification occurs. The register must include:

- Members' names and postal addresses
- When they joined and (if applicable) left membership
- Class of membership (if the company has different types of membership)

The names of former members cannot be removed from the register until 10 years after they ceased to be a member. If the company has more than 50 members and the register is not alphabetical, an alphabetical index must be kept indicating where to find each member's name in the register (the page number, or the date under which it is listed).

Keep at the registered office or alternative inspection place a Register of Directors

The register must be kept in a bound or unbound book, or electronically, provided it can be printed. It must contain:

- Full names, with forenames in full
- Any former name or names by which the person was known for business purposes
- Service addresses
- Nationalities
- Dates of birth
- Business occupations (if any)
- Date elected or appointed as a director and ceasing to be a director

Companies House must be notified within 14 days of the appointment or election of a director on form AP01 (if the director is an individual), retirement, resignation, death or removal of a director on form TM01 or any change in a director's name, service address, residential address, or any other particulars entered in the register on form CH01 (if the director is an individual). Companies House must be notified on form CH01 within 14 days of any change in a directors' service address or usual residential address.

It is good practice for a company to maintain its evidence of a directors' consent to act in the company register. This is not required to be filed with the AP01 but the box on the form must be checked to state that the company has received the specific director's consent to act. The register must be open to members free of charge and to the public for a fee.

Maintain a confidential Register of Directors' Residential Addresses

This includes the director's usual residential address or a statement that the director's usual residential address is the same as the service address in the register of directors at the company's registered office.

Keep a Register of Secretaries at the registered office or alternative inspection place

For applicable companies (those with a secretary of having previously employed a secretary) this register must be kept in a bound or unbound book, or electronically, provided it can be printed. It must contain:

- The name of each secretary
- Any former name or names by which the person was known for business purposes;
- A service address
- Date appointed and date of ceasing to be a secretary

Companies House must be notified within 14 days of the appointment of a secretary on form AP03, termination of appointment of a secretary on form TM02 or any change of details on form CH03.

Keep a Register of People of Significant Control

All limited companies, including co-operative companies, must keep a Register of Persons of Significant Control. A person of significant control (PSC) is an individual who meets one or more of the following five conditions:

- Owns more than 25 per cent of the shares in the company
- Holds more than 25 per cent of the voting rights in the company
- Has the right to appoint or remove a majority of the board of directors
- Has the right to exercise or actually exercises significant influence or control; or
- Has the right to exercise or actually exercises significant influence or control over a trust or firm (which the trust or firm would be a PSC, if it were an individual)

Examples of where an individual may have significant influence or significant control are:

- Being significantly involved in the management and direction of the company (e.g. a person who regularly consults on and influences board decisions)
- Having recommendations always, or almost always, followed by those who hold the majority of the voting rights in the company

The register of 'persons with significant control' is not limited to individuals and relevant legal entities (RLEs) may also need to be included. An organisation will be a RLE if:

- It is a legal entity (a body corporate)

- It would meet the definition of a PSC if it were an individual
- It is subject to its own disclosure requirements. This includes possessing its own PSC Register or being subject to equivalent disclosure requirements (e.g. it has shares admitted to trading on a regulated market within the European Economic Area)

Companies must investigate whether they have PSCs. If there are PSCs, the PSC register should include the following details for each PSC:

- Name
- Service address (if applicable)
- Residential address
- Nationality
- Date of birth
- A statement about the nature of their control.

If your company has no PSCs then you must note this in the PSC register. You must not leave the register blank.

If there is a change of PSC or the details of a PSC change then companies will need to update their register of persons with significant control within 14 days of the change and file the relevant form PSC01 to PSC09.

Keep a Register of Charges and Copies of Charges

The register must be kept in a bound or unbound book, or electronically, provided it can be printed at the registered office (or alternative inspection place). It must contain an up to date:

- Date of the charge
- Description of instrument (if any) creating or evidencing the charge, names of the parties, details of the property secured by the charge and amount of the charge

Notice of a charge or mortgage being created must be given to Companies House, with a fee. When the charge is paid off the entry should be crossed through. In addition to the register, the company must also keep a copy of every charge.

Keep at the registered office or alternative inspection place a Minute Book

The Minute Book should be difficult to tamper with and should contain an authenticated copy of: the minutes of all general meetings; and written resolutions by the members and governing body meetings. Minutes are authenticated if they are signed by the person chairing that meeting or the next meeting. Resolutions are confirmed if they are signed by a director or the secretary. It is also good practice to keep minutes of any sub-committee meetings.

Minutes of general meetings, records of written resolutions and minutes of directors' meetings must be kept for at least 10 years. It is good practice to keep them throughout the life of the company and beyond. Minutes of general meetings and records of written resolutions must be open to members free of charge. Minutes of directors' meetings need not be open to anyone other than the directors or auditors.

Any member is entitled to a copy of all or part of the minutes of any general meeting (within 14 days of asking for it). The company may charge a fee. There is no statutory obligation to provide anyone, other than directors or auditors, with a copy of the minutes of directors' meetings. In addition, a register of holders of debentures, a register of sealings, records of directors' service contracts and directors' indemnities may also be kept (as appropriate).

Ensure the company complies with its governing document

The governing document must be continually reviewed to ensure it is up to date.

Give proper notice of general meetings to all members and to the auditor

Auditors (where appointed) are entitled to attend general meetings. Unless required under the governing document, private companies are not required to hold an annual general meeting (AGM) or indeed any other general meetings. However, it is good practice to hold them to give members the opportunity to meaningfully participate in discussions that affect the company.

Keep the company seal (if applicable)

If a company does not have a seal, company documents are executed by the signatures of two directors or by the secretary and a director. Provided it is not prohibited by the governing document, they can be also be signed by a single director in the presence of a witness, who must also sign.

Occasional duties

Inform Companies House of any change to the registered office address

Use form AD01 to notify Companies House of changes.

Ensure correct procedures for passing resolutions to amend the company's governing document are followed

If the company's objects or any entrenched provisions in the articles are affected by the change then the appropriate statutory forms CC01-CC04 with the amendment paperwork must be filed.

Notify Companies House of any changes to the company name on form NM01

Use form NM01 to inform Companies House of changes.

Extra duties of the secretary of a company limited by shares

The secretary should:

- Maintain the company's register of share allotments, register of transfers, and documents relating to redemption or purchase of own shares out of capital
- Complete a statement of capital with the annual return and when capital changes occur (for example, on allotment of new shares) using form SH01
- File a return of allotment on form SH01 within one month of the allotment of shares

Key points for the secretary of a newly registered company

Essential reading

For more in-depth guides visit www.uk.coop/guides



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